

REMARKS

In the Office Action, claims 24-34 are rejected under 35 U.S.C. § 103 as allegedly unpatentable in view of U.S. Patent Application Publication No. 2003/0087476 (“Oohata”) and U.S. Patent No. 5,426,342 (“Nakamura”); claims 24-34, 36-39, and 41-43 are rejected under 35 U.S.C. § 103 as allegedly unpatentable over U.S. Patent Application Publication No. 2003/0162463 (“Hayashi”) and Nakamura; and claims 40, and 44-46 are rejected under 35 U.S.C. § 103 as allegedly unpatentable over Hayashi in view of Nakamura and further in view of U.S. Patent Application Publication No. 2003/0227253 (“Seo”). Applicants believe that the rejections have been overcome as discussed in further detail below.

At the outset, claims 24-34 have been canceled without prejudice or disclaimer as previously provided. Therefore, the obviousness rejection in view of Oohata and Nakamura with respect to same has been rendered moot, and thus, should be withdrawn.

With respect to the remaining obviousness rejections, the Patent Office primarily relies on the Hayashi reference. The Patent Office indicates that the earliest prior art date of Hayashi is its U.S. filing date, namely, February 10, 2003. See, Office Action, page 17.

Applicants respectfully submit that Hayashi cannot be relied on as prior art associated with its U.S. filing date contrary to the Patent Office’s position. The Hayashi reference is based on the national stage of International Application No. PCT/JP02/03549 filed on April 9, 2002. Further, the corresponding Hayashi international application was not published in English. Therefore, the U.S. filing date of Hayashi cannot be relied on as an effective prior art date under § 102(e) pursuant to MPEP § 706.02(f)(1) at Example 5.


Further, the earliest effective prior art date of Hayashi is its U.S. Publication date of August 28, 2003. However, the effective filing date of the present application of March 6, 2003 predates the earliest effective prior art date of Hayashi as Applicants also indicated in their previously-submitted amendment. Therefore, the Hayashi reference cannot be applied as prior art, and thus, the remaining obviousness rejections should be withdrawn based on at least these reasons.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

The Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing.

Respectfully submitted,

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